

## Update: Friend of the Court Domestic Violence Resource Book

### CHAPTER 4

#### Custody and Parenting Time

##### 4.10 Civil Remedies to Enforce Parenting Time Orders

Effective December 1, 2002, 2002 PA 569 amended numerous provisions of the laws relating to the Friend of the Court. It also added MCL 552.511b, which provides for the enforcement of support and parenting time orders. Accordingly, the following language should be inserted in Section 4.10 following the first paragraph:

The Friend of the Court office must initiate enforcement of a custody or parenting time violation upon receipt of a written complaint stating specific facts that constitute a violation of a custody or parenting time order. MCL 552.511b(1). If a parent has the right to interact with his or her child pursuant to a custody or parenting time order and requests assistance, the Friend of the Court must provide assistance. MCL 552.511b(1).

Within 14 days of the receipt of the complaint, the Friend of the Court must send a copy of the complaint to the individual accused of interfering with the order and to each party to the custody or parenting time order. MCL 552.511b(2).

MCL 552.511b(3) provides:

“If, in the opinion of the office, the facts as stated in the complaint allege a custody or parenting time order violation that can be addressed by taking an action authorized under section 41 of the support and parenting time enforcement act, MCL 552.641, the office shall proceed under section 41 of the support and parenting time enforcement act, MCL 552.641.”

Effective December 1, 2002, 2002 PA 568 amended numerous provisions of the Support and Parenting Time Enforcement Act, specifically MCL

552.641(1). Accordingly, the following language should replace the discussion of MCL 552.641(1) contained on pp 124–25:

\*See 2002 PA 571, specifically, MCL 552.602(m), for the definition of “friend of the court case.”

The Support and Parenting Time Enforcement Act, MCL 552.641(1), requires the Friend of the Court, for a “friend of the court case,”\* to take one or more of the following actions on an alleged custody or parenting time order violation:

- F Apply a makeup parenting time policy under MCL 552.642.
- F Commence civil contempt proceedings under MCL 552.644. If a parent fails to appear in response to an order to show cause, the court may issue a bench warrant, and, except for good cause shown on the record, shall order the parent to pay the costs of the hearing, the issuance of the warrant, the arrest, and further hearings. MCL 552.644(5).
- F File a motion pursuant to MCL 552.517d for a modification of the existing parenting time provisions to ensure parenting time, unless it would be contrary to the best interests of the child.
- F Schedule mediation pursuant to MCL 552.13.
- F Schedule a joint meeting under MCL 552.542a.

MCL 552.641(2) permits the Friend of the Court to decline to take one of the foregoing actions if any of the following circumstances apply:

“(a) The party submitting the complaint has previously submitted 2 or more complaints alleging custody or parenting time order violations that were found to be unwarranted, costs were assessed against the party because the complaint was found to be unwarranted, and the party has not paid those costs.

“(b) The alleged custody or parenting time order violation occurred more than 56 days before the complaint is submitted.

“(c) The custody or parenting time order does not include an enforceable provision that is relevant to the custody or parenting time order violation alleged in the complaint.”

If the court finds that a parent has violated a custody or parenting time order without good cause,\* the court must find that parent in contempt. MCL 552.644(2). MCL 552.644(2)(a)–(h) provide that once the court finds a parent in contempt, it may do one or more of the following:

“(a) Require additional terms and conditions consistent with the court’s parenting time order.

“(b) After notice to both parties and a hearing, if requested by a party, on a proposed modification of parenting time, modify the parenting time order to meet the best interests of the child.

“(c) Order that makeup parenting time be provided for the wrongfully denied parent to take the place of wrongfully denied parenting time.

“(d) Order the parent to pay a fine of not more than \$100.00.

“(e) Commit the parent to the county jail.

“(f) Commit the parent to the county jail with the privilege of leaving the jail during the hours the court determines necessary, and under the supervision the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.

“(g) If the parent holds an occupational license, driver’s license, or recreational or sporting license, condition the suspension of the license, or any combination of the licenses, upon noncompliance with an order for makeup and ongoing parenting time.

“(h) If available within the court’s jurisdiction, order the parent to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.”

The court must state on the record the reason it is not ordering a sanction listed in MCL 522.644(2)(a)–(h). MCL 552.644(3).

If the court finds a party to a parenting time dispute has acted in bad faith, the court must order the party to pay a sanction and to pay the other party’s costs. MCL 552.644(6) and MCL 552.644(7). The first time a party acts in bad faith the sanction may not exceed \$250.00. The second time a party acts in bad faith the sanction may not exceed \$500.00. Sanctions for any third or

\*“Good cause” includes, but is not limited to, consideration of the safety of a child or a party who is governed by the parenting time order. MCL 552.644(3).

subsequent finding that a party has acted in bad faith may not exceed \$1,000.00. MCL 552.644(6).

## CHAPTER 7

### Personal Protection Orders

#### 7.5 Motion to Modify or Rescind a PPO

Insert the following at the bottom of page 187:

##### **F Burden of Proof**

In *Pickering v Pickering*, \_\_\_ Mich App, \_\_\_, (2002), the Court of Appeals held that the burden of justifying the continuation of an ex parte PPO is on the petitioner. The court indicated that because the PPO statute and court rules governing motions to rescind or terminate PPOs are silent as to the burden of proof, MCR 3.310(B)(5) is controlling.

MCR 3.310(B)(5) provides, in part:

“... At a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order whether or not the hearing has been consolidated with a hearing on a motion for a preliminary injunction or an order to show cause.”

In *Pickering*, the Court of Appeals indicated that the burden of proof has two aspects: the “burden of persuasion” and the “burden of going forward with evidence.” *Id.* at \_\_\_\_\_. In the context of a PPO granted ex parte, the “burden of persuasion” is the burden of justifying the continuation of the PPO. The “burden of persuasion” requires the petitioner to demonstrate that the PPO should continue because it is “just, right or reasonable.” *Id.* at \_\_\_\_\_. Regarding the “burden of going forward with the evidence,” the Court held that although it would “not offend MCR 3.310(B)(5) by placing the burden of first coming forward with evidence on defendant, we believe it would be more appropriate in these hearings to have the petitioner—who has the burden of justification throughout the proceedings—to also be the party to first come forward with evidence.” *Id.* at \_\_\_\_\_ n 1.